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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/032,676	02/27/98	BOGEN	S CYL98-01

021005 IM62/0525
HAMILTON BROOK SMITH AND REYNOLDS
TWO MILITIA DR
LEXINGTON MA 02421-4799

EXAMINER

LE, L

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 05/25/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/032,676

Applicant(s)

Bogen et al.

Examiner

Long V. Le

Group Art Unit
1743



☒ Responsive to communication(s) filed on Jun 1, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-13 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or unobviousness.
4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muraishi (USP 5,154,889) in view of Kitagawa et al. (USP 4,629,862).

Muraishi discloses an automatic device for incubating samples substantially as claimed. The device comprises a platform for supporting a plurality of samples, a plurality of independent heaters 71 positioned on the platform for providing heat to the

samples (figures 1 and 6, and column 6, lines 32-48). The moving platform is taught by Muraishi at figures 10 and 11. Muraishi fails to specifically recite a user interface mounted off the platform for the communication with a temperature controller electronic circuit of the heaters. Kitagawa et al. teach an incubator having a user interface 14 which is positioned off the platform and connected to the heater for controlling the temperature of the incubator (figures 1 and 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Muraishi with a user interface mounted off the platform, as taught by Kitagawa et al., since such a user interface is considered conventional in the art and is required in order to control the temperature of the incubator.

With respect to the group of wires, it would have been an obvious matter of design choice to provide the device of Muraishi with a particular number of wires, since applicant has not disclosed that such a recited group of wires solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any particular group of wires depending on a particular heating application.

Conclusion

5. No claims are allowed.

6. References: Janson, Rogers et al., Kledzik et al., Kerr et al., Houdy et al., Kureshy et al., Niori et al., Arai et al., Miller, and Copeland et al. are cited as art of interest for the teachings of incubators.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Long V. Le whose telephone number is (703) 305-3399.

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Art Unit: 1743

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in cursive script, appearing to read 'Long V. Le'.

Long V. Le
Primary Patent Examiner, Group Art Unit 1743
May 21, 1999